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Agenda item 26

DRAFT REPORT OF THE COMMISSION

Rapporteur: Mr. François-Xavier NGOUBEYOU

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GE.94-12118 (E)

Inhuman or Degrading Treatment or Punishment . .

X. QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: (a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; (b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; (c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES; (d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The Commission considered agenda item 10 and sub-items (a), (b), (c) and (d) at its 26th to 29th meetings and at its 31st to 34th meetings, from 16 to 22 February, and at its 55th meeting, on 4 March 1994. 2/

2. For its consideration of item 10, the Commission had before it the following documents:

Report of the Secretary-General on human rights and forensic science (E/CN.4/1994/24);

Report of the Working Group on Arbitrary Detention (E/CN.4/1994/27);

Updated report of the Secretary-General on the detention of international civil servants and their families, prepared pursuant to Commission on Human Rights resolution 1993/39 (E/CN.4/1994/30);

Note by the Secretary-General on the question of the human rights of all persons subjected to any form of detention or imprisonment (E/CN.4/1994/32);

Report of the Special Rapporteur, Mr. Abid Hussain, on the promotion and protection of the right to freedom of opinion and expression, prepared pursuant to Commission on Human Rights resolution 1993/45 (E/CN.4/1994/33);

Note by the Secretary-General on the drafting of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (E/CN.4/1994/88 and Corr.1);

Letter dated 28 April 1993 from the Permanent Mission of the Republic of Cyprus to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights at its forty-ninth session (E/CN.4/1994/93 and Corr.1);

Letter dated 28 January 1994 from the Permanent Representative of the Transitional Government of Ethiopia to the United Nations Office at Geneva,

addressed to the Assistant Secretary-General for Human Rights (E/CN.4/1994/103);

Written statement submitted by International PEN, a non-governmental organization on the Roster (E/CN.4/1994/NGO/5);

Written statement submitted by the International Federation of Action of Christians for the Abolition of Torture, a non-governmental organization on the Roster (E/CN.4/1994/NGO/8);

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II) (E/CN.4/1994/NGO/10);

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II) (E/CN.4/1994/NGO/11);

Written statement submitted by the American Association of Jurists, a non-governmental organization in consultative status (category II) (E/CN.4/1994/NGO/18);

Written statement submitted by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II) (E/CN.4/1994/NGO/19);

Written statement submitted by Reporters Sans Frontières, a non-governmental organization in consultative status (category II) (E/CN.4/1994/NGO/21);

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II) (E/CN.4/1994/NGO/25);

Written statement submitted by the International Commission of Jurists (E/CN.4/1994/NGO/36).

3. At the 26th meeting, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, introduced his report (E/CN.4/1994/33) to the Commission.

4. At the same meeting, the Chairman-Rapporteur of the Working Group on Arbitrary Detention, Mr. Louis Joinet, introduced the report of the Working Group on Arbitrary Detention (E/CN.4/1994/27) to the Commission.

5. In the general debate on item 10, statements 3/ were made by the following members of the Commission: Australia (28th), Austria (32nd), Chile (26th and 32nd), China (28th), Cuba (34th), Cyprus (26th), India (29th), the Netherlands (33rd), Peru (32nd), Poland (33rd), the Republic of Korea (33rd), the Russian Federation (29th), the United Kingdom of Great Britain and Northern Ireland (29th), the United States of America (32nd).

6. The Commission also heard statements by the observers for: Algeria (33rd), the Czech Republic (28th), Greece (on behalf of the European Union and its members) (26th), Norway (on behalf of Denmark, Finland, Iceland, Norway and Sweden) (32nd), Portugal (33rd), Spain (32nd), Turkey (28th).

7. The Observer for Switzerland made a statement (29th).

8. The Commission also heard statements by the following non-governmental organizations: American Association of Jurists (31st), Amnesty International (29th), Arab Lawyers' Union (34th), Article 19: The International Centre Against Censorship (28th), Centre Europe - Tiers Monde (33rd), Commission for the Defence of Human Rights in Central America (33rd), Commission of the Churches on International Affairs of the World Council of Churches (27th), France Libertés: Fondation Danielle Mitterrand (26th), Habitat International Coalition (28th), Human Rights Watch (33rd), International Association against Torture (31st), International Association of Educators for World Peace (27th), International Commission of Jurists (28th), International Educational Development, Inc. (33rd), International Federation of Human Rights (National Coordination of Human Rights in Peru) (26th), International Indian Treaty Council (31st), International League for the Rights and Liberation of Peoples (27th), International PEN (26th), International Work Group for Indigenous Affairs (32nd), Lawyers Committee for Human Rights (29th), Liberation (31st), Pax Christi (32nd), Pax Romana (and National Coordination of Human Rights in Peru) (33rd), Reporters Sans Frontières (31st), Robert F. Kennedy Memorial, Service, Peace and Justice in Latin America (29th), Women's International League for Peace and Freedom (34th), World Christian Life Community (28th), World Organization Against Torture (27th), World Student Christian Federation (33rd).

9. Statements in exercise of the right of reply or its equivalent were made by the representatives of Bangladesh (33rd), China (29th and 33rd), Costa Rica

(34th), Cuba (29th, 32nd, 33rd and 34th), Ecuador (32nd), India (29th, 32nd, 33rd and 34th), Indonesia (33rd and 34th), Iraq (29th), the Islamic Republic of Iran (32nd), Kenya (29th and 32nd), Malawi (32nd), Pakistan (29th, 32nd and 34th), the Philippines (34th), Portugal (34th), Spain (29th), the Syrian Arab Republic (34th), and the United States of America (34th).

10. Statements in exercise of the second right of reply were made by Pakistan (34th) and Portugal (34th).

11. At the 55th meeting, the representative of Kenya introduced draft resolution E/CN.4/1994/L.31, sponsored by Angola, Burundi*, Cameroon, Côte d'Ivoire*, Ethiopia*, Gabon, Ghana*, Kenya, Lesotho, Liberia*, Madagascar*, Malawi, Mauritius, Mauritania, Morocco*, Nigeria, Rwanda*, Senegal*, Sudan, Swaziland*, Togo, Tunisia, United Republic of Tanzania*, Zambia* and Zimbabwe*.

12. The draft resolution was adopted without a vote.

13. For the text as adopted, see chapter II, section A, resolution 1994/30.

14. The representative of the United States of America made a statement explaining his delegation's position.

15. At the same meeting, the representative of Portugal introduced draft resolution E/CN.4/1994/L.42, sponsored by Australia, Austria, Cameroon, Costa Rica, the Czech Republic*, France, Germany, Hungary, Ireland, Italy, Liechtenstein*, New Zealand*, Philippines*, Portugal*, Republic of Korea, Slovakia*, Sweden*, Ukraine*, and the United Kingdom of Great Britain and Northern Ireland. Canada, Greece*, Guinea Bissau, Japan, Lithuania*, Luxembourg*, Norway* and Turkey* subsequently joined the sponsors of the draft resolution.

16. The Commission suspended consideration of draft resolution E/CN.4/1994/L.42.

17. Later at the same meeting, the Commission resumed consideration of draft resolution E/CN.4/1994/L.42.

18. The representative of Portugal orally revised the draft resolution as follows:

(a) In the fourth preambular paragraph, in the English text, add the words "sending missions in difficult conditions" after "responsibilities";

(b) In the same paragraph, after "world", delete the words "particularly in peace-keeping missions and humanitarian operations in difficult conditions";

(c) In the same paragraph, after "staff members", add "and other personnel acting under its authority".

19. The draft resolution, as orally revised, was adopted without a vote.

20. For the text as adopted, see chapter II, section A, resolution 1994/42.

21. At the same meeting, the representative of the Russian Federation introduced draft resolution E/CN.4/1994/L.43, sponsored by Argentina*, Armenia*, Austria, the Netherlands, Portugal*, the Russian Federation and Slovakia*. The Czech Republic*, France, Germany, Greece*, Lithuania* and the United States of America subsequently joined the sponsors of the draft resolution.

22. The representative of the Russian Federation orally revised the draft resolution by deleting from the thirteenth preambular paragraph, after the words "the experience", "the Commission of Experts established pursuant to Security Council resolution 780 (1992) of 6 October 1992 and other".

23. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications 2/ of the draft resolution.

24. The draft resolution, as orally revised, was adopted without a vote.

25. For the text as adopted, see chapter II, section A, resolution 1994/31.

26. At the same meeting, the representative of France introduced draft resolution E/CN.4/1994/L.44, sponsored by Argentina*, Australia, Austria, Belgium*, Bulgaria, Cameroon, Canada, Chile, Costa Rica, Cyprus, the Czech Republic*, Finland, France, Germany, Hungary, Ireland*, Mauritius, Norway*, Portugal*, Romania, Rwanda*, Senegal*, Slovakia*, Sweden* and Switzerland*. Cuba, Guinea-Bissau, Lithuania*, Madagascar*, the Netherlands, the Philippines*, Poland, the Russian Federation, Slovakia*, Tunisia, the United Kingdom of Great Britain and Northern Ireland and the United States of America subsequently joined the sponsors.

27. The representative of France orally revised the draft resolution as follows:

(a) In paragraph 1, replace "adversarial procedure" by "the procedures which it has established";

(b) Paragraph 5 becomes paragraph 6, and paragraph 6 becomes paragraph 5;

(c) In the new paragraph 5, replace "also" by ", in this context,";

(d) In paragraph 16, after "Habeas corpus", insert "or a similar procedure";

(e) In paragraph 19, after the words "its consultations" insert "within the framework of its terms of reference".

28. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications 2/ of the draft resolution.

29. The draft resolution was adopted without a vote.

30. For the text as adopted, see chapter II, section A, resolution 1994/32.

31. At the same meeting, the representative of Canada introduced draft resolution E/CN.4/1994/L.46, sponsored by Australia, Austria, Belgium*, Canada, Chile, Costa Rica, Cyprus, the Czech Republic*, Denmark*, France, Germany, Hungary, Ireland*, Japan, the Netherlands, Norway*, Poland, Portugal*, the Russian Federation, Sweden* and Switzerland*. Bulgaria, Liechtenstein*, Lithuania*, Slovakia*, the United Kingdom of Great Britain and Northern Ireland and the United States of America subsequently joined the sponsors.

32. The representative orally revised the draft resolution by replacing paragraph 10 by the following, in the English text: "Expresses its concern at the number of cases of arbitrary detention ordered following the exercise of rights protected by article 19 of the International Covenant on Civil and Political Rights concerning the right to freedom of opinion and expression, as noted in the third report of the Working Group on Arbitrary Detention".

33. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications 2/ of the draft resolution.

34. The draft resolution, as orally revised, was adopted without a vote.

35. For the text as adopted, see chapter II, section A, resolution 1994/33.

36. After the vote, the representative of Malaysia made a statement in explanation of his delegation's position.

37. At the same meeting, the representative of Austria introduced draft resolution E/CN.4/1994/L.48, sponsored by Australia, Austria, Costa Rica,

Denmark*, Finland, Germany, Hungary, Italy, the Netherlands, Norway* and Spain*. Belgium*, Cameroon, Canada, Cyprus, France, Lithuania*, New Zealand* and Sweden* subsequently joined the sponsors.

38. The draft resolution was adopted without a vote.

39. For the text as adopted, see chapter II, section A, resolution 1994/34.

40. After the vote, the representative of the United States of America made a statement in explanation of his delegation's position.

41. At the same meeting, the representative of Chile introduced draft resolution E/CN.4/1994/L.50, sponsored by Argentina*, Australia, Barbados, Bulgaria, Canada, Chile, Costa Rica, Denmark*, Ecuador, Finland, France, Hungary, Italy, Mauritius, the Netherlands, Peru, Poland, the Republic of Korea, Senegal*, Switzerland*, Uruguay and Venezuela. Australia, the United Kingdom of Great Britain and Northern Ireland, Portugal*, Belgium*, the Philippines*, Sweden*, Lithuania*, Norway*, the Republic of Korea, Cyprus, Cuba, Nigeria, Kuwait* and Gabon subsequently joined the sponsors.

42. The draft resolution was adopted without a vote.

43. For the text as adopted, see chapter II, section A, resolution 1994/35.

44. At the same meeting, the representative of Japan introduced draft decision E/CN.4/1994/L.51, sponsored by Canada, Japan and Norway*. Germany subsequently joined the sponsors of the draft decision.

45. The representative of the Syrian Arab Republic made a statement concerning the draft decision.

46. In accordance with article 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications 2/ of the draft decision.

47. The draft decision was adopted without a vote.

48. For the text as adopted, see chapter II, section B, decision 1994/197.

49. In view of the adoption of decision 1994/107 (see paras. 44-48), the Commission decided to take no action on draft decision 3, recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities for adoption by the Commission (E/CN.4/1994/2-E/CN.4/Sub.2/1993/45, chap. I, sect. B).

50. On 28 February 1994, draft resolution E/CN.4/1994/L.53 had been submitted by the following countries: Argentina*, Belgium*, Canada, Finland, France, Germany, Hungary, Latvia*, Norway*, Poland, Portugal*, Russian Federation, Rwanda*, Senegal*, Slovenia* and Switzerland*. This draft resolution read as follows:

"Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

"The Commission on Human Rights,

"Guided by articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4 and 26 of the International Covenant on Civil and Political Rights,

"Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

"Bearing in mind the Vienna Declaration and Programme of Action (A/CONF.157/23), in particular paragraph 27 of part I and paragraphs 88, 90 and 95 of part II,

"Recalling its resolution 1989/32 of 6 March 1989, 1990/33 of 2 March 1990, 1991/39 of 5 March 1991, 1992/33 of 28 February 1992 and 1993/44 of 5 March 1993,

"Recalling also General Assembly resolution 45/166 of 18 December 1990, in which the Assembly welcomed the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and invited Governments to respect them and to take them into account within the framework of their national legislation and practice,

"Bearing in mind the principles contained in the draft Declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1), prepared by Mr. L.M. Singhi, the importance of which was noted by the Commission on Human Rights, in its resolution 1989/32 of 6 March 1989,

"Noting on the one hand the increasingly frequent attacks on their independence suffered by judges, lawyers and court officers, and on the

other hand the link between the weakening of safeguards for the judiciary and the gravity of violations of human rights,

"1. Welcomes the final report on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1993/25 and Add.1), prepared by Mr. Louis Joinet, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

"2. Endorses the recommendation of the Sub-Commission, as contained in its resolution 1993/39 of 26 August 1993, to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officers, and the nature of problems liable to attack this independence and impartiality;

"3. Requests the Chairman of the Commission to appoint, for a period of three years, after consultation with the other members of the Bureau, a special rapporteur whose mandate will consist of the following tasks:

"(a) To submit any allegations transmitted to the special rapporteur to adversarial examination;

"(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officers but also progress achieved in protecting and enhancing such independence and make proposals for technical assistance programmes and advisory services to the States concerned;

"(c) To study, in view of their topicality and importance, for the purpose of making proposals, certain questions of principle, the aim being to protect and enhance the independence of the judiciary and lawyers;

"4. Urges all Governments to assist the special rapporteur in the discharge of his or her mandate and to transmit to him or her all the information requested;

"5. Requests the special rapporteur, starting with the fifty-first session, to submit a report on the activities connected with his or her mandate;

"6. Requests the Secretary-General, within the limits of the resources of the United Nations, to provide the special rapporteur with any assistance needed for the discharge of his or her mandate;

"7. Decides to consider this question at its fifty-first session;

"8. Recommends the following draft decision to the Economic and Social Council for adoption:

'The Economic and Social Council,

'Taking note of Commission on Human Rights resolution 1994/... of ... 1994, endorses the decision of the Commission to confirm the proposal of the Sub-Commission to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officers, and the nature of problems liable to attack this independence and impartiality, and recommends that this take the form of a special rapporteur whose mandate will consist of the following tasks:

'(a) To submit any allegations transmitted to the special rapporteur to adversarial examination;

'(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officers but also progress achieved in protecting and enhancing such independence and make proposals for technical assistance programmes and services when they are requested by the State concerned;

'(c) To study, in view of their importance and topicality, for the purpose of making proposals, certain questions of principle, the aim being to protect and enhance the independence of the judiciary and lawyers;

'The Council also approves the request of the Commission to the Secretary-General to provide the special rapporteur with all the assistance necessary for the completion of his or her task.'"

51. At the 55th meeting, the representative of Belgium introduced a revised draft resolution (E/CN.4/1994/L.53/Rev.1) which had the same sponsors as draft resolution E/CN.4/1994/L.53. Angola, Armenia*, Australia, Austria, Bangladesh, Cameroon, Chile, Czech Republic*, Denmark*, Germany, Guinea-Bissau, Ireland*,

Jordan*, Luxembourg*, Madagascar*, Netherlands, Republic of Korea, Slovakia*, Sweden* and Uruguay subsequently joined the sponsors of the draft resolution.

52. The representatives of India and the Syrian Arab Republic made statements concerning the draft resolution.

53. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications 2/ of the draft resolution.

54. The draft resolution was adopted without a vote.

55. For the text as adopted, see chapter II, section A, resolution 1994/41.

56. In view of the adoption of resolution 1994/41 (see paras. 50-55), the Commission decided to take no action on draft resolution VI recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities for adoption by the Commission (E/CN.4/1994/2-E/CN.4/Sub.2/1993/45, chapt. I, sect. B).

57. At the same meeting, the Commission considered draft resolution II recommended by the Sub-Commission for adoption by the Commission (E/CN.4/1994/2-E/CN.4/Sub.2/1993/45, chap. I, sect. A).

58. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications 2/ of the draft resolution.

59. The draft resolution was adopted without a vote.

60. For the text as adopted, see chapter II, section A, resolution 1994/43.

61. At the same meeting, the Commission considered draft resolution V recommended by the Sub-Commission for adoption by the Commission (E/CN.4/1994/2-E/CN.4/Sub.2/1993/45, chap. I, sect. A).

62. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to an estimate of the administrative and programme budget implications 2/ of the draft resolution.

63. The draft resolution was adopted without a vote.

64. For the text as adopted, see chapter II, section A, resolution 1994/44.

A. Torture and other cruel, inhuman or degrading treatment or punishment

65. In connection with agenda item 10 (a), the Commission had before it the following documents:

Report of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (A/48/520);

Report of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (E/CN.4/1994/29 and Add.1);

Report submitted by the Special Rapporteur, Mr. Nigel S. Rodley, pursuant to resolution 1992/32 of the Commission (E/CN.4/1994/31);

Written statement submitted by the American Association of Jurists, a non-governmental organization in consultative status (category II) (E/CN.4/1994/NGO/18).

66. At the 26th meeting, the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, introduced his report (E/CN.4/1994/31).

67. In the general debate on agenda item 10 (a), statements 1/ were made by the following countries members of the Commission: Australia (28th), Austria (32nd), Brazil (32nd), Cuba (34th), Cyprus (26th), Czech Republic (28th), Greece (26th), India (29th), Indonesia (31st), Malawi (27th), Netherlands (33rd), Peru (32nd), Poland (33rd), Portugal (33rd), Republic of Korea (33rd), Sri Lanka (29th), Sudan (29th), United Kingdom of Great Britain and Northern Ireland (29th).

68. The Commission heard statements by the observers for the following countries: Denmark (on behalf of Denmark, Finland, Iceland, Norway and Sweden) (27th), Egypt (32nd), Greece (on behalf of the European Union and its members) (26th), Senegal (27th) and Spain (32nd).

69. The observer for Switzerland made a statement (29th).

70. The Commission also heard statements by the representatives of the following non-governmental organizations: Amnesty International (29th), Andean Commission of Jurists (28th), International Association of Educators for World Peace (27th), Centre Europe-Tiers Monde (33rd), Commission of the Churches on International Affairs of the World Council of Churches (27th), International Indian Treaty Council (31st), World Muslim Congress (33rd), International Federation of Human Rights (26th), World Student Christian Federation (33rd), France-Liberté -

Fondation Danielle Mitterrand (26th), Indian Institute for Non-Aligned Studies (27th), Human Rights Watch (33rd), International Educational Development, Inc. (33rd), International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities (33rd), Liberation (31st), International League for the Rights and Liberation of Peoples (28th), International Movement for Fraternal Union among Races and Peoples (27th), World Movement of Mothers (27th), International Falcon Movement (28th), Internationale éducative socialiste, International Association against Torture (31st), Pax Christi (32nd), Pax Romana (33rd), Arab Lawyers Union (34th), Service, Peace and Justice in Latin America (29th), Lawyers Committee for Human Rights (29th).

71. Statements in exercise of the right of reply or its equivalent were made by the representatives of India (29th, 32nd and 34th), Indonesia (33rd and 34th), Iraq (29th), Pakistan (29th, 32nd and 34th), Spain (29th) and Turkey (33rd).

72. At the 55th meeting, the representative of Finland introduced draft resolution E/CN.4/1994/L.47, sponsored by the following countries: Australia, Austria, Cameroon, Canada, Chile, Czech Republic*, Costa Rica, Denmark*, Finland, France, Hungary, Iceland*, Ireland*, Italy, Latvia*, Liechtenstein*, Netherlands, New Zealand*, Norway*, Poland, Senegal*, Sweden*, Switzerland*, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay. Algeria*, Belgium*, Germany, Greece*, Japan, Luxembourg*, Nigeria, Senegal* and Tunisia subsequently joined the sponsors of the draft resolution.

73. The draft resolution was adopted without a vote.

74. For the text as adopted, see chapter II, section A, resolution 1994/36.

75. On 2 March 1994, draft resolution E/CN.4/1994/L.54 had been submitted by the following countries: Argentina*, Australia, Austria, Belgium*, Burundi*, Canada, Costa Rica, Denmark*, Finland, Germany, Hungary, Ireland*, Italy, Latvia*, Liechtenstein*, Luxembourg*, Netherlands, New Zealand*, Norway*, Portugal*, Romania, Russian Federation, Rwanda*, Senegal*, Slovakia*, Slovenia*, Sweden*, Switzerland* and United Kingdom of Great Britain and Northern Ireland. The draft resolution read as follows:

"Torture and other cruel, inhuman or degrading treatment or punishment

"The Commission on Human Rights,

"Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

"Recalling the Declaration on the Protection of All Persons from Being Subjected to Torture or Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

"Recalling also the World Conference on Human Rights and its Vienna Declaration and Programme of Action, in particular part I, paragraph 30, in which the World Conference stated that, inter alia, torture and other cruel, inhuman and degrading treatment or punishment constituted serious obstacles to the full enjoyment of all human rights,

"Recalling further part II.B.5 of the Vienna Declaration and Programme of Action concerning the eradication of torture,

"Noting with appreciation that the number of States which have become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is steadily increasing,

"Welcoming the establishment at the regional level, in accordance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

"Seriously concerned, however, about the persistence of an alarming number of reported cases of torture and other cruel, inhuman or degrading treatment or punishment taking place in various parts of the world,

"Recalling its resolution 1985/33 of 13 March 1985, in which it decided to appoint for one year a special rapporteur to examine questions relevant to torture, and all its subsequent resolutions in which that mandate was regularly extended, most recently for another three years in resolution 1992/32 of 28 February 1992, while maintaining the annual reporting cycle,

"Welcoming a continuing exchange of views between the Special Rapporteur and the Committee against Torture, established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

or Punishment, the Working Group on Arbitrary Detention, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as contacts with the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture,

"Aware that torture constitutes a criminal obliteration of the human personality which can never be justified under any circumstances, by any ideology or by any overriding interest, and convinced that a society that tolerates torture can never claim to respect human rights,

"Determined to promote the full implementation of the prohibition under international and national law of the practice of torture and other cruel, inhuman or degrading treatment or punishment,

"Convinced that efforts to eradicate torture should first and foremost be concentrated on prevention,

"Noting, in this regard, the importance of the provision of advisory services and technical assistance as forms of practical assistance to interested States with a view to enabling them to develop the necessary infrastructure to meet international human rights standards,

"Recalling the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, adopted by the General Assembly in its resolution 37/194 of 18 December 1982, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985,

"Recalling also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly in its resolution 43/173 of 9 December 1988,

"Recalling further the conclusions and recommendations of the previous Special Rapporteur underlined in its resolutions 1987/29 of 10 March 1987, 1988/32 of 8 March 1988, 1989/33 of 6 March 1989, 1990/34 of 2 March 1990,

1991/38 of 5 March 1991, 1992/32 of 28 February 1992 and 1993/40 of 5 March 1993,

"1. Commends the Special Rapporteur on his report (E/CN.4/1994/31);

"2. Urges all Governments to promote the speedy and full implementation of the Vienna Declaration and Programme of Action, in particular of the section relating to freedom from torture;

"3. Stresses the recommendations of the previous Special Rapporteur, commended by the present Special Rapporteur for serious action by Governments, and in particular:

"(a) Concerning the importance of instituting a system of periodic visits by independent experts to places of detention as a highly effective preventive measure against the occurrence of torture;

"(b) That the judiciary should play an active role in guaranteeing to detainees the rights they have in accordance with international and national standards;

"(c) That the right to have access to a lawyer is one of the basic rights of a person who is deprived of his liberty and that restrictions on this right should therefore be exceptional and always subject to judicial control;

"(d) That each person should have the right to initiate promptly after his arrest proceedings before a court on the lawfulness of his detention, in conformity with the International Covenant on Civil and Political Rights;

"(e) That interrogation of detainees should take place only at official interrogation centres, that each interrogation should be duly recorded and start with the identification of all the persons present and that the blindfolding or hooding of detainees during interrogation should be absolutely forbidden;

"(f) Pertaining to the establishment at the national level of an independent authority able to receive complaints by individuals about torture or other severe maltreatment;

"4. Recalls that incommunicado detention is highly conducive to torture and that in the Special Rapporteur's view incommunicado detention should be forbidden;

"5. Recalls the recommendation of the previous Special Rapporteur that Governments and professional and medical associations should take strict measures against members of the medical profession who play a role in the practice of torture;

"6. Endorses the recommendation of the previous Special Rapporteur that those who violate article 7 of the International Covenant on Civil and Political Rights, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible and that whenever a complaint of torture is found to be justified, the

perpetrators should be severely punished, especially the official in charge of the place of detention where the torture is found to have taken place;

"7. Calls upon all States that have not yet done so to become as soon as possible parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and requests the Special Rapporteur to continue to promote universal accession to that Convention and to encourage all States to fulfil its provisions strictly;

"8. Emphasizes the importance of training programmes for law enforcement and security personnel, and draws the attention of interested Governments to the possibilities offered in this connection by the United Nations programme of advisory services in the field of human rights;

"9. Encourages the Special Rapporteur to make appropriate recommendations concerning situations in which advisory services to judicial, law enforcement, detention and other authorities might assist interested Governments in combating the occurrence of torture;

"10. Urges the Secretary-General to make available, as part of the United Nations programme of advisory services in the field of human rights, qualified experts in law enforcement, detention and medicine to assist Governments, at their request, in their efforts to prevent the occurrence of torture;

"11. Decides that the Special Rapporteur, in carrying out his mandate, shall continue to seek and receive credible and reliable information from Governments, the specialized agencies and intergovernmental and non-governmental organizations;

"12. Approves the methods of work employed by the Special Rapporteur, in particular as regards urgent appeals;

"13. Considers it desirable that the Special Rapporteur should continue to have a further exchange of views with the various mechanisms and bodies entrusted with the task of combating torture, in particular with a view to enhancing further their effectiveness and mutual cooperation, and that he should pursue cooperation with relevant United Nations programmes notably that on crime prevention and criminal justice;

"14. Invites the Special Rapporteur, in carrying out his mandate, to bear in mind the need to be able to respond effectively to credible and reliable information that comes before him and to carry out his work with discretion;

"15. Appeals to all Governments to cooperate with and assist the Special Rapporteur in the performance of his tasks and to supply all information requested, including by reacting properly to his urgent appeals;

"16. Urges those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer expeditiously;

"17. Regrets that in the past year no Government has invited the Special Rapporteur to visit its country;

"18. Encourages Governments to give serious consideration to inviting the Special Rapporteur to visit their countries so as to enable him to fulfil his mandate even more effectively;

"19. Calls upon the Special Rapporteur to continue to include information in his report on the follow-up by Governments to his recommendations, visits and communications;

"20. Requests the Secretary-General to provide all necessary assistance to the Special Rapporteur to cover all of his activities in order

to enable him to submit his report to the Commission at its fifty-first session."

76. At the 55th meeting, the representative of Belgium submitted a revised draft resolution (E/CN.4/1994/L.54/Rev.1), sponsored by the following countries: Argentina*, Armenia*, Australia, Austria, Belgium*, Burundi*, Cameroon, Canada, Costa Rica, Czech Republic*, Denmark*, Finland, Germany, Greece*, Hungary, Ireland*, Italy, Latvia*, Liechtenstein*, Luxembourg*, Malta*, Netherlands, New Zealand*, Norway*, Portugal*, Romania, Russian Federation, Rwanda*, Senegal*, Slovakia*, Slovenia*, Sweden*, Switzerland*, Ukraine and United Kingdom of Great Britain and Northern Ireland. Cyprus, the United States of America and Poland subsequently joined the sponsors of the draft resolution.

77. The draft resolution was adopted without a vote.

78. For the text as adopted, see chapter II, section A, resolution .

B. Status of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

79. In relation to agenda item 10 (b), the Commission had before it the report of the Secretary-General on the status of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1994/28).

80. In the general debate on agenda item 10 (b), statements 3/ were made by the following countries members of the Commission: Austria (32nd), China (29th), Cyprus (26th), Malawi (27th) and Sri Lanka (29th).

81. The Commission also heard statements by the observers for the following countries: Algeria (33rd), Czech Republic (28th), Denmark (on behalf of Denmark, Iceland, Finland, Norway and Sweden) (28th), Greece (on behalf of the European Union and its members) (26th), Senegal (27th) and Spain (32nd).

82. The Commission also heard statements by the representatives of the following non-governmental organizations: Women's International League for Peace and Freedom (34th) and World Organization against Torture (26th).

83. The representative of Spain made a statement in exercise of the right of reply or its equivalent (29th).

84. At the 55th meeting, the representative of Finland introduced draft resolution E/CN.4/1994/L.49, sponsored by the following countries: Australia, Austria, Bulgaria, Cameroon, Canada, Chile, Costa Rica, Czech Republic*, Denmark*, Finland, France, Greece*, Hungary, Ireland*, Italy, Latvia*,

Liechtenstein*, Netherlands, New Zealand*, Norway*, Peru, Poland, Portugal*, Russian Federation, Senegal*, Slovakia*, Spain*, Sweden*, Switzerland*, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay. Côte d'Ivoire, Germany, Greece*, Luxembourg*, Mexico, Panama* and Senegal* subsequently joined the sponsors of the draft resolution.

85. The draft resolution was adopted without a vote.

86. For the text as adopted, see chapter II, section A, resolution 1994/38.

C. Question of enforced or involuntary disappearances

87. In relation to agenda item 10 (c), the Commission had before it the following documents:

Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26 and Corr.1 and 2);

Report on the visit to the former Yugoslavia by a member of the Working Group on Enforced or Involuntary Disappearances at the request of the Special Rapporteur on the situation of human rights in the former Yugoslavia (E/CN.4/1994/26/Add.1);

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II) (E/CN.4/1994/NGO/25).

88. At the [illegible]th meeting, on 16 February 1994, the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, Mr. Ivan Tosevski, introduced the report of the Working Group to the Commission (E/CN.4/1994/26 and Corr.1 and 2).

89. During the general debate on agenda item 10 (c), statements 3/ were made by the following countries members of the Commission: Australia (28th), Austria (32nd), Cuba (34th), Cyprus (26th), India (29th), Indonesia (31st), Malawi (27th), Netherlands (33rd), Peru (32nd), Poland (33rd), Republic of Korea (33rd), Sri Lanka (29th) and United Kingdom of Great Britain and Northern Ireland (29th).

90. The Commission also heard statements by the observers for the following countries: Croatia (32nd), Nicaragua (26th), Norway (32nd) and Portugal (33rd).

91. The observer for Switzerland made a statement (29th).

92. The Commission also heard statements by the representatives of the following non-governmental organizations: Amnesty International (29th), Andean Commission

of Jurists (28th), Arab Lawyers Union (34th), Arab Organization for Human Rights (27th), Commission of the Churches on International Affairs of the World Council of Churches (27th), Commission for the Defence of Human Rights in Central America (33rd), France-Libertés: Fondation Danielle Mitterrand (26th), Indian Institute for Non-Aligned Studies (27th), International Association against Torture (31st), International Educational Development, Inc. (33rd), International Indian Treaty Council (31st), International Organization for the Elimination of All Forms of Racial Discrimination (32nd), Latin American Federation of Associations of Relatives of Detained or Disappeared Persons (32nd), Liberation (31st), Service, Peace and Justice in Latin America (29th), Women's International League for Peace and Freedom (34th), World Muslim Congress (33rd) and World Society of Victimology (26th).

93. Statements in exercise of the right of reply or its equivalent were made by the representatives of India (32nd and 34th), Indonesia (33rd and 34th), Morocco (34th) and Pakistan (29th, 32nd and 34th).

94. On 24 February 1994, the representative of Croatia had introduced draft resolution E/CN.4/1994/L.29; Bosnia and Herzegovina* and Slovakia* subsequently joined the sponsors of this draft resolution. The text of the draft resolution read as follows:

"Problem of missing persons in the territory of the former Yugoslavia

"The Commission on Human Rights,

"Guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the Geneva Conventions of 12 August 1949 for the protection of war victims and the Additional Protocols thereto of 1977, as well as other relevant documents and resolutions of the General Assembly and the Security Council.

"Recalling General Assembly resolution 47/133 of 18 December 1992, in which the General Assembly proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance,

"Recalling also its resolution 1993/7 in which it specifically requested the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, in consultation with the Working Group on Enforced or Involuntary Disappearances and the International Committee of

the Red Cross, to develop proposals for a mechanism to address the subject of disappearances in the former Yugoslavia,

"Deeply disturbed at the huge number of missing persons still unaccounted for in the conflict in the former Yugoslavia, particularly in the Republic of Bosnia and Herzegovina and the Republic of Croatia,

"Aware of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all,

"Expressing its deepest sympathy to the families of missing persons in the territory of the former Yugoslavia while reaffirming its readiness to undertake all necessary measures with a view to expediting the search for their next of kin,

"Having considered the report on the visit to the former Yugoslavia by a member of the Working Group on Enforced or Involuntary Disappearances undertaken at the request of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1994/26/Add.1) and the valuable proposals contained therein,

"Stressing that the basic objective of the "special process" for dealing with the problem of missing persons in the territory of the former Yugoslavia proposed in the report should be to provide their relatives and families with information on their fate,

"1. Endorses the conclusions and recommendations contained in the report of a member of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26/Add.1) and decides to establish the proposed 'special process' as the joint mandate of the Special Rapporteur on the situation of human rights in the former Yugoslavia and one member of the Working Group on Enforced or Involuntary Disappearances;

"2. Expresses its full support for the recommendation that the 'special process' should be strictly humanitarian and rely on a pragmatic approach with a view to securing maximum efficiency and maximum cooperation of all parties in the search for missing persons in the territory of the former Yugoslavia;

"3. Considers that the 'special process' should be enabled to make direct contact with the parties concerned and on-the-spot investigations which are necessary to promote the search for missing persons;

"4. Requests the Secretary-General to provide the 'special process' with the necessary experienced personnel, equipment and financial resources from the regular budget of the United Nations, if necessary by soliciting contributions for this humanitarian cause from interested Governments and other organizations, and requests the Working Group on Enforced or Involuntary Disappearances to proceed immediately, through appropriate inter-sessional consultations, to designate one of its members for this purpose;

"5. Stresses the urgency of establishing this special mechanism in order that all the requests to search for missing persons which have already been processed by the Working Group on Enforced or Involuntary Disappearances can immediately be presented to the parties concerned;

"6. Invites the Governments concerned, other interested parties and those in a position to help, including the International Committee of the Red Cross to cooperate fully and constructively with the 'special process' so as to enable it to discharge its functions efficiently and thus to alleviate the pain and suffering of many relatives of disappeared persons;

"7. Requests the Special Rapporteur on the situation of human rights in the former Yugoslavia and the designated member of the Working Group on Enforced or Involuntary Disappearances to keep the families and relatives of missing persons informed of the results of their investigations and to submit joint annual reports to the Commission on Human Rights which would include, as appropriate, identification of obstacles and impediments affecting their work."

95. At the 55th meeting, no member having requested a vote on draft resolution E/CN.4/1994/L.29, in accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council, the Commission did not vote on the draft resolution.

96. At the same meeting, the representative of France introduced draft resolution E/CN.4/1994/L.45, sponsored by the following countries: Argentina*,

Australia, Austria, Belgium*, Bulgaria, Cameroon, Chile, Costa Rica, Czech Republic*, Denmark*, Finland, France, Hungary, Ireland*, Italy, Luxembourg*, Mauritius, New Zealand*, Norway*, Poland, Romania, Russian Federation, Rwanda*, Senegal*, Slovakia*, Spain*, Sweden*, Switzerland*. Canada, Cyprus, Czech Republic*, Guinea Bissau, Latvia*, Luxembourg*, Madagascar*, Netherlands, Portugal* and the United Kingdom of Great Britain and Northern Ireland subsequently joined the sponsors of the draft resolution.

97. The representative of France revised the draft resolution orally as follows:

(a) In the sixth preambular paragraph, after the words "Working Group, the" delete the words "legislation, policy and";

(b) In the same paragraph, replace the words "many States" by the words "a number of States can";

(c) In the penultimate preambular paragraph, replace the word "establishment" by the word "compilation";

(d) In the same paragraph, add the word "preliminary" before the word "list";

(e) In operative paragraphs 11 and 12, replace the words "the Governments concerned" by the word "Governments";

(f) In operative paragraph 17, replace the words "pursuant to" by the words "in the exercise of";

(g) In operative paragraph 18, delete the words "to assess the practice of States in the light of the Declaration";

(h) In operative paragraph 21, after the words "habeas corpus", add the words "or a similar procedure";

(i) In operative paragraph 23, replace the word "Endorses" by the words "Takes note with interest of".

98. The draft resolution, as orally revised, was adopted without a vote.

99. For the text as adopted, see chapter II, section A, resolution 1994/39.

D. Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

100. In relation to agenda item 10 (d), the Commission had before it the report of the Working Group on the draft optional protocol to the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1994/25 and Add.1).

101. At the 26th meeting, on 16 February 1994, the Chairman-Rapporteur of the Working Group, Mr. Jorge Rhenán Segura, introduced the report of the Working Group on the draft protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

102. In the general debate on agenda item 10 (d), statements 3/ were made by the following countries members of the Commission: Australia (28th), Austria (32nd), Brazil (32nd), Chile (31st), Costa Rica (29th), Cyprus (26th) and Malawi (27th).

103. The Commission also heard a statement by the observer for Senegal (27th).

104. The Commission also heard statements by the representatives of the following non-governmental organizations: World Organization Against Torture (27th) and Service, Peace and Justice in Latin America (29th).

105. At the 55th meeting, the representative of Costa Rica introduced draft resolution E/CN.4/1994/L.52, sponsored by the following countries: Argentina*, Australia, Austria, Barbados, Belgium*, Brazil, Bulgaria, Cameroon, Canada, Chile, Colombia, Costa Rica, Côte d'Ivoire, Czech Republic*, Denmark*, Ecuador, El Salvador*, Finland, France, Germany, Greece*, Guatemala*, Hungary, Italy, Latvia*, Liechtenstein*, Luxembourg*, Madagascar*, Netherlands, Norway*, Peru, Portugal*, Romania, Russian Federation, Senegal*, Slovakia*, Slovenia*, Spain*, Sweden*, Switzerland*, Uruguay and Venezuela. Bulgaria, Cuba, Cyprus, Germany, Greece*, Latvia*, Malta*, Panama*, United Kingdom of Great Britain and Northern Ireland and United States of America subsequently joined the sponsors of the draft resolution.

106. The draft resolution was adopted without a vote.

107. For the text as adopted, see chapter II, section A, resolution 1994/40.